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THE BAR ASSOCIATION REAFFIRMS SERIOUS CHARGES AGAINST JUDGE A. S. HUMPHREYS

Defense Made by the Accused Is Dissected and Its Falsity Exposed.

Strong Points Made Over the Licensing of Legislators, Editing a Newspaper and Appointing Lewis.

BY A VOTE of 28 to 4, two members not voting, the Bar Association last evening adopted the report of the committee appointed to formulate charges and press the case against Judge A. S. Humphreys. This report sets forth the work of the committee at length and reviews the reply of the respondent, adding comments which place the Association on record as maintaining the stand it first took in defence of the good name and reputation of the Hawaiian bench and bar. The vote upon the motion to adopt the report was as follows:

Ayes: E. B. McClanahan, L. A. Thurston, L. J. Warren, L. A. Andrews, W. R. Castle, A. G. M. Robertson, J. T. De Bolt, Frank Andrade, H. A. Bigelow, W. L. Stanley, A. S. Carter, R. D. Mead, W. C. Achi, C. F. Peterson, A. M. Brown, Cecil Brown, E. P. Dole, Henry Holmes, A. L. C. Atkinson, J. L. Kaulukou, J. A. Matthewman, L. A. Dickey, F. M. Brooks, A. F. Judd, E. A. Mott-Smith, Chas. R. Hemenway, P. L. Weaver, A. A. Wilder.

Noes: F. W. Milverton, J. A. Magoon, J. M. Vivas, C. C. Bitting.

Not voting: Charles S. Dole, Dan. H. Case.

There were thirty members of the Association present when Vice-President Kaulukou called the meeting to order. Little time was spent upon preliminaries and Chairman Cecil Brown, of the committee appointed at the meeting of May, to formulate and present the charges, rose and announced that the committee had prepared its report which was in the custody of the secretary of the Association. He then began the reading of the report in full, explaining that it had been prepared before the return of either Hankey or Humphreys.

When he had finished the reading of the report Mr. Brown moved that it be printed for distribution among the members of the Bar and their friends, whenever it was wanted. Mr. McClanahan thought the first thing was to accept or reject the report and the discussion was opened by A. G. M. Robertson. He said the committee had done its work thoroughly and well, and had given a complete report of its actions. There was a feeling at the original meeting, he said, that the result was a matter of doubt, but the members of the Association were compelled either to make the stand, or lie down like curs. He said the report was very full and frank and should be adopted.

C. C. Bitting objected to the report on the ground that it would be undignified in the Bar to adopt it as he thought it was unjust. He said he did not vote for the resolutions, as there might have been the change that he was influenced by personal motives. Mr. Thurston said that Mr. Bitting had signed a statement which was to the same effect as the resolutions which were afterward adopted, and that he stated then that he was in full sympathy with the statement, and only hesitated because of his having had difficulties. Bitting agreed that this was a correct statement of his position.

W. L. Stanley said there was nothing in the resolutions or the report which reflected upon Judge Humphreys as a quick or astute judge, but that the charges completely set out the grounds upon which the association felt it had reasons to act.

J. M. Vivas said he was not present when the resolutions were adopted, but he denied that the men who stayed away from that meeting were cowards. He said he was sorry to see the matter opened again, as it would make bad blood. He charged that the association was being brought into politics, and he thought the members were being made tools of by designing men. He said the judge had been severe, but he thought it was a fundamental point that all the evidence should be before him, before he could act.

Cecil Brown said as a member of the committee which formulated the charges and made the report, that there was no politics in this matter. What was wanted he said, was to keep politics off the Bench, and out of the Bar when members of it appeared before the bench.

J. A. Mathewman said he wanted to put himself on record. He was sorry that the number which was now being quoted as 37 had not been 38, as it would have been had he not been at the Coast when the meeting was held. The most important point, he said, was that the judge had intended to make the court a political machine, through the operations of the bailiff act, which was why he wanted to endorse the original resolutions and the present report.

L. A. Andrews said that the assertion that the 37 members of the association who voted for the resolutions, or the 42 who united in condemning the judge, were actuated by politics, was absurd. Now that Judge Humphreys was back here, he said, he would be treated with respect and the Bar would expect to be treated with the respect due it.

J. T. De Bolt said the dignity of the Court must be respected, but the members of the Bar must not lose their own self respect. There was a dangerous condition, he said, when the Bar must crawl to the Bench.

J. A. Magoon said he admired the manliness of the men who would not flinch when it was necessary to make such a report in the face of the fact that they were being brought right into contact daily with the very court. He reviewed the history of the case and said Attorney General Knox had said that the Bar was wrong and had not a foot on which to stand. He said he was not there to commend or condemn Humphreys but he was not in favor of adopting the report. He got into an argument with several members as to the capacity of some of the district magistrates to speak English, but wound up with the statement that the committee had acted as a judge in the report and that he could not approve of it.

W. C. Achi and P. L. Weaver spoke in favor of the report and Secretary Case explained that while he had no love for the judge, he would ask to be excused from voting from the fact that any vote he might cast would be interpreted as the result of personal feeling over the events of the week. The vote was then taken, the only feature being that Charles S. Dole, one of the new members, asked to be excused from voting. As soon as the report was adopted Mr. Brown moved that it be printed in pamphlet form and the Association, agreeing to this, adjourned.

Earlier in the evening, the following were elected members of the association: Charles S. Dole, I. M. Long, E. A. Mott-Smith, W. L. Rawlins, Charles R. Hemenway and Louis J. Warren. The full report of the committee is as follows:

COMMITTEE'S REPORT.

To the Bar Association of the Hawaiian Islands:

As chairman of the committee of five, appointed by the Bar Association at its meeting of May 29th, A. D. 1901, to formulate charges and specifications against Judge Humphreys, First Judge of the Circuit Court of the First Circuit, Territory of Hawaii, and to take depositions and statements of the members of this Association and others of and concerning the conduct and acts of the said A. S. Humphreys; to provide for the presentation of said charges and depositions to the President and Attorney General of the United States, and to urge the removal of said Judge Humphreys from office, I beg leave to submit the following report:

Your committee, in formulating the charges and specifications under said resolution, followed very closely the preamble contained therein. Our report would have been presented sooner but for the non-arrival of F. W. Hankey, Esq., our representative at Washington, from whom your committee wished a personal report before making its own. Mr. Hankey has, however, been delayed on his way by illness, and is likely to be delayed still further on that account. Your committee therefore decided to present their report forthwith. The substance of the charges and specifications preferred against respondent, and a summary of the evidence adduced thereunder together with brief comment on respondent's answer thereto and on certain portions of the report of Attorney General Knox, are set forth hereunder. Your committee has not sought to deal with every statement contained in respondent's answer deemed to be a misrepresentation or untrue. The bulk of these are left untouched. Most of those commented on cover matter of general knowledge to residents of the Territory.

FIRST CHARGE.

THE FIRST CHARGE IS THAT JUDGE HUMPHREYS, WHILE EXERCISING THE POWERS AND PERFORMING THE DUTIES OF A CIRCUIT JUDGE, "CONTROLS AND IS ENGAGED DIRECTLY AND ACTIVELY IN THE PUBLICATION AND RUNNING OF A PARTISAN NEWSPAPER" PUBLISHED WITHIN THE CIRCUIT IN WHICH HE, THE SAID HUMPHREYS, PRESIDES AS JUDGE.

The proofs submitted in support of this charge are the affidavit og J. A. McCandless, ex-member of the Council of State under the Provisional Government, ex-Senator under the Republic of Hawaii, and ex-Superintendent of Public Works under the Territory of Hawaii—a man of unimpeachable integrity and veracity, and a stockholder in the "Honolulu Republican," the paper which respondent admits that he controls.

EVIDENCE OF J. A. M'CANDLESS.

(See Exhibit 1.)

The gist of Mr. McCandless' affidavit is that the said paper having been established to support the republican party, and it having developed strong hostility to the local republican administration, there was a discussion among the directors and stockholders looking toward the passing of a vote of censure on the editor for its editorial policy; that upon hearing of this proposed action respondent, on the 14th of November, 1900, then being the presiding Circuit Judge in Honolulu, called a meeting of stockholders, at which he represented a majority of the stock, thereby controlling the action of the meeting.

"That at said meeting said respondent said he caused said meeting to be called in view of the talk of passing a vote of censure of Gill (the editor), and with the object of voting a resolution of confidence in said Gill, which resolution he thereupon proceeded to produce, and the same was passed by virtue of the control of stock then held by the respondent.

"That at said meeting the respondent said he considered that any director who was not in accord with the majority of the stockholders could not in honor stay on the board of directors."

That deponent thereupon and because of said action of said respondent, resigned from the position of director of said company.

That on May 27th last, respondent still being the Circuit Judge, a meeting of the stockholders of said paper was again held.

That at said meeting, in discussing the right of the company to reduce the salary of the city editor, respondent stated that when he had employed the said Logan (such employment being since respondent became Judge), he had agreed that three months' notice should be given by both sides.

That recently he (respondent) had ordered Mr. Thompson, the president of the company, to discharge Logan for cause.

That thereafter Logan had come to the house of respondent and on explanations and promises made, he (said respondent) had reversed his order and directed Logan to tear up the letter of dismissal.

During all of these proceedings respondent was not an officer of the company.

That at the time of said meeting, a financial statement of the company showed that it was steadily losing money and that said respondent had advanced $4,200 toward running expenses, and that it was then in debt $1,500 more, which respondent agreed to pay.

That at said meeting Mr. Johnson, the business manager, stated that he would resign unless expenses were reduced; that respondent replied, "Let us have your resignation; we have heard enough about it, and I move we accept it at once."

Mr. McCandless' affidavit concludes that, as a stockholder and recent director of the company publishing said paper, it is his full understanding and belief that respondent now does and ever since the starting of the publication of said paper in June, 1900, had absolute, direct and complete control of said paper and of the editorials thereof.

EVIDENCE OF W. H. JOHNSON.

(See Exhibit 2.)

In further support of the foregoing charge, there was filed the affidavit of W. H. Johnson, business manager of the "Honolulu Republican," from November 15th, 1900, to June 1st, 1901.

Mr. Johnson states that at the time he became business manager he acquired a large block of the paper and became a director.

That "it soon became apparent to him," and he states it as a fact, that: "the management and control of said company and its newspaper and business, financially, politically and otherwise, was under the control and management of Judge Humphreys."

"That said Judge personally and directly controlled and directed the whole proposition;" that this was due to the fact that said respondent, through his own holdings of stock in said company, and through holdings of stock held by others under his control and voted by him, represented at any meeting of the stockholders, the majority of the entire stock of the company.

Affiant further states that said respondent was very frequently at the offices of the company, and kept constantly in touch with Mr. Gill, the editor; that Gill was in the habit of consulting the respondent at his chambers during the day and of telephoning to the respondent at night, concerning the policy and conduct of the paper, and that Gill obeyed the instructions and orders of respondent in regard to the paper implicitly; that said respondent personally engaged and dismissed employees without reference to the board of directors; that of affiant's own knowledge respondent engaged Daniel Logan as city editor without consulting the board, and personally fixed his salary at a rate which affiant considered unreasonable, and against which he protested in vain.

That upon affiant, as business manager, making a tender for legislative printing, an editorial was published in the paper attacking him for being a member of the printing ring; that the editor stated to him that he did so under instructions from respondent, although he considered it unjustifiable. That affiant saw respondent about it, and respondent said that it was done by his instructions, under a misapprehension as to the facts, and that he would instruct the editor to make a public apology for the attack, but such course was not pursued at the request of affiant.

That as illustrative of the absolute control by respondent, affiant having refused to get out a special edition of the paper at a time when job work required precedence, the editor appealed to respondent, who wrote a personal letter to affiant, directing him to give the newspaper work precedence over the job work.

That during four weeks succeeding April 16th of this year, the editor being absent on a vacation, respondent practically took his place as editor of the paper, and wrote most of the editorials.

Affiant identifies a number of the exhibits filed by the committee as being editorials from the "Republican," which were personally handed to affiant by respondent for publication, part of them being in his own handwriting.

The editorials so identified contain most violent denunciation of Governor Dole and others, and are unquestionably partisan.

EXTRACTS FROM THE "HONOLULU REPUBLICAN."

In addition to the foregoing affidavits, the committee filed 313 extracts from the said "Honolulu Republican," showing continuous personal and partisan attacks upon the other Circuit Judges, the Supreme Court, the Territorial Executive and others, thus establishing the partisan character of the paper.

Respondent does not deny a single statement of fact above stated by Mr. McCandless, and limits his denial of Johnson's statements to the fact that he had for four weeks acted as editor and wrote the articles identified by Mr. Johnson.

He practically admits the correctness of the substance of that charge by saying:

"With the general policy of the paper upon public questions I was and am in accord." * * *

"Believing as I did and do that certain members of the Executive Department of the Islands was not for the best interests of the people, I have not endeavored to restrain Mr. Gill's proper criticism of men or measures, and to that extent I admit the responsibility arising from my connection with the newspaper in question."

In other words, respondent admits that during the entire period which he has sat upon the bench he has owned the control of a paper which has in the past and still continues to be violently partisan, continuously engaging in most bitter and personal denunciation of men and interests which are compelled to come and are coming daily before him as suitors and attorneys.

SECOND CHARGE.

THE SECOND CHARGE IS THAT RESPONDENT, WHILE OCCUPYING THE OFFICE OF JUDGE, HAS TAKEN AND CONTINUES TO TAKE AN ACTIVE AND LEADING PART IN BITTER POLITICAL CONTROVERSIES WITHIN THE TERRITORY OF HAWAII, AND MORE PARTICULARLY WITHIN THE CIRCUIT IN WHICH HE PRESIDES.

The evidence produced in support of this charge is the fact of his active control of and contributions to the newspaper referred to in the first charge, and also the affidavits (see Exhibits 319 and 320) of A. M. Brown and Lorrin Andrews, of their personal knowledge, that, during the session of the legislature respondent held personal caucuses exclusively with Home Rule members of the legislature at his house and private office, in which matters purely political were discussed and debated, and particularly that respondent addressed a meeting of such legislators, urging them to vote against a bill introduced by Achi, a republican senator, providing for apportionment of senators for the different terms, "warning them not to be fooled by it, as under it the republicans could secure some of the senators for the long term." And on another occasion caucussed with such legislators about confirming or rejecting nominations to office made by the governor.

MEMBERS OF THE LEGISLATURE.

In support of this charge there are also filed the affidavits of R. H. Makekau, Kelikoa and J. K. Kekaula (see Exhibits 321, 322 and 323), members of the legislature and Home Rule party, to the effect that respondent was the recognized friend and adviser of the Home Rule party, and that the leading Home Rule members were in constant consultation with respondent, and their principal measures were first submitted to and approved by him, one of said affiants stating that respondent was spoken of as "father" of Home Rule legislators.

Respondent's reply to this, as to all other charges, is unsworn to, and is limited to his own statements, which constitute a denial that he ever advised with the Home Rule legislators on matters that were political in their nature, thus making a straight issue of veracity between himself on the one hand, and high sheriff of the Territory and Attorney Andrews on the other. Mr. Andrews' evidence on that point, or part of it, is as follows, refuting clearly respondent's version of the character of these caucuses.

Upon the occasion of affiant's first visit to his office at night when he found Judge Humphreys in caucus with certain Home Rulers as aforesaid, affiant, before reaching his office and while in the street, noticed that the office of Mr. Whiting was lighted up, and heard the sound of applause coming from these offices, affiant not knowing at the time what it meant and upon entering the hallway affiant looked through open doorway and saw Judge Humphreys standing at his desk addressing the Home Rulers, with John E. Bush by his side also standing, and acting as interpreter. Affiant only heard so much of said Humphreys' remarks as one would naturally hear in walking through the open hallway from the stairs to affiant's office door. Affiant remembers said Humphreys' warning the Home Rulers against Achi's apportionment bill, and heard said Humphreys say that they must not be fooled by it, that under it the republicans could secure some of the senators for the long term. The Achi above referred to is one of the republican senators elected from the Island of Oahu.

HUMPHREYS' POLITICAL ACTIVITY.

To show the effect of respondent's activity in politics while holding a judicial position, and to illustrate how such conduct will sooner or later tinge his judicial acts, your committee presented among the exhibits respondent's charge to the grand jury in February last, in which he declared favorably for the establishment of self-government throughout the Territory. Respondent's answer on this point gives out the impression that the act complained of was in fact that of an ingenuous, ardent young patriot, seeking to break the bread of political life to the incipient American citizens in our "new possessions." As a matter of fact, the issue as to how far it is safe or wise to go in the establishment of local self-government throughout the Territory has been a vital living issue ever since civilized government was established in these Islands, and hardly an election has taken place here in which this issue has not played more or less part. During that period the pendulum has swung both ways, at times toward centralization, and again the other way. The election of road boards by popular vote, for instance, was tried not many years ago, and after an experience of several years, the proposition was abolished by common effort of the conservative elements in all parties. The issue is a very delicate one at best, involving as it necessarily does racial issues as well, and the net result of the past political experience in this Territory along these lines has been such as to put outside of the pale of respectable politics any such reckless advocacy of unchecked local self-government as is contained in the charge in question. At the time it was given all the political parties had made declarations on the question, a struggle was going on in the legislature over the same issue, and the tendency and desire among the more ignorant element to go to extremes in this matter was only too manifest. Great anxiety prevailed throughout the Territory as to what would happen, and it was under these circumstances thoroughly understood by respondent that the charge in question was interjected into the situation, backed up by violent editorials in respondent's paper along the same line, respondent at the same time caucussing freely with the native party in the legislature, but discussing according to his own contention non-political matters, such as the exemption law, etc. Your committee claim, under the circumstances, that respondent's making the charge in question was doing politics and utilizing his judicial power to that end.

THIRD CHARGE.

THE THIRD CHARGE IS THAT WHILE HOLDING THE OFFICE OF JUDGE, RESPONDENT HAS USED HIS POSITION ON THE BENCH AND THE POWERS AND PRIVILEGES OF HIS OFFICE IMPROPERLY TO PROMOTE HIS PERSONAL AND POLITICAL ENDS.

Under this charge your committee proves by the affidavit of J. A. Thompson (see Exhibit 326):

First—The issuance to seventeen members of the legislature, said legislature then being in session, of licenses to practice law in the district or justice courts at chambers on appeal, throughout the Territory, twelve of said licenses being granted within a period of ten days.

Second—That said licenses were issued without examination upon the law in brief hearings of a few minutes each, in the office of respondent, often without a clerk, and at no time with the publicity of a hearing in an open court room and on occasions without any written application first filed by the petitioner.

Third—That most of said licensees cannot speak English, the official language of the courts, having required an interpreter in making their applications to respondent.

Fourth—That they reside in circuits under the control of judges of the same class as respondent and having equal powers to grant licenses to practice law.

None of the above evidence was denied by respondent, except that the licenses covered the right to practice in any court outside the district courts.

The licenses distinctly give the right to practice in Circuit Courts at chambers on appeal, to wit, a court of record, and respondent cannot plead ignorance of that fact, for he not only granted the licenses in question but drew the form of the petition and had a number struck off in advance on a typewriter ready for immediate use. (See Exhibit 326.)

The Report of Lawyers' Committee Against the Politician Is Adopted.

Discussion of the Findings Brings Out Some Objectors But the Vote Discovers Only Four Opponents to Action.

dence of J. L. Kaulukou, also undenied by respondent, that many of said applicants had "no knowledge whatever of law," and several of them were so illiterate that they could not write "an intelligent, grammatical letter, even in their own tongue." (See Exhibit 327.)

Your committee charged respondent with issuing these licenses to secure personal favor with the dominant party in the legislature, and to promote his personal ends, and on this question of motive introduced two lines of evidence, to wit:

(1) Evidence showing that respondent in issuing the licenses in question has had to disregard and did disregard the rules of his own court and his avowed policy as to granting licenses to practice law.

(2) That respondent was doing politics with most of these licensees at the time of the applications to such an extent that he was not in a position to withhold such a favor from hem, even if he had so desired.

EVIDENCE OF J. A. THOMPSON.

On the first of the above points, your committee proved by the evidence of Thompson, clerk of respondent's court (see Exhibit 326), the adoption by said respondent, shortly after the passage of the Organic Act by Congress, providing for a form of government for the Territory of Hawaii, of a rule requiring all proceedings in court to be conducted in the English language, this following the provisions of said Congressional Act making English the official language of the Territory. Said Thompson further testified that under the rule in question no attorney of Hawaiian extraction was permitted to address the court or conduct a case in the Hawaiian language through an interpreter, except in the case of a Hawaiian witness being interrogated directly by counsel in Hawaiian, answers being interpreted into English by an interpreter.

EVIDENCE OF J. L. KAULUKOU.

J. L. Kaulukou also gave evidence (Exhibit 327) on this point, as follows: "J. L. Kaulukou, being first duly sworn, on oath deposes and says: That he is an attorney at law of Hawaiian extraction, having practiced law in the courts of the Hawaiian Islands and in the Territory of Hawaii since the year 1877, affiant having been admitted to practice law from that year; that affiant's knowledge of English is so imperfect that he has invariably practiced law in the courts aforesaid in the Hawaiian language through an interpreter, affiant speaking in the Hawaiian language, which is his mother tongue; but after the passage of the Organic Act making English the official language, respondent refused to permit affiant or any other Hawaiian attorney, to address the court or witnesses, or otherwise take part in any proceedings in court, in the Hawaiian language; that thereupon affiant was compelled to give up his profession or speak in English as best he could, and therefore affiant has since said date conducted his cases in English, getting along as best he could. Affiant knows of some Hawaiian attorneys who, by reason of their inability to speak English at all, have been compelled to abandon the practice of law altogether."

Your committee further proved by the evidence of said Kaulukou that it has not been the practice in this Territory for Circuit Judge to license persons to practice law who reside permanently within the Circuit of another judge, and ex-Judge Stanley (see Exhibit 328) testifies that respondent, in conversation with him prior to the granting of the license in question, denounced any such act, to wit, the granting of licenses outside of one's own Circuit, as "highly improper on the part of any judge."

The foregoing evidence of Judge Stanley is undenied by respondent, unless he intends to raise such an issue of veracity between himself and Judge Stanley, which certainly seems doubtful, by the following statement contained in his answer (see page 18): "In granting licenses to persons who did not reside in the Circuit in which I presided, I was not aware that I was violating the established comity and practice existing between the judges of the several Circuits, nor was I in fact doing so, as no such comity or practice has ever been established."

VIOLATED HIS OWN RULES.

Your committee therefore presented reliable and undisputed evidence that the respondent licensed the persons in question to practice before him and before all other Circuit Judges at chambers on appeal throughout the Territory, in utter disregard of the rules of his own court and daily enforced by him, requiring the exclusive use of the English language; and further, that said licenses were granted under circumstances already characterized by respondent, when he thought another Circuit Judge had done the very same thing by him, as "highly improper on the part of any judge."

Your committee felt that the foregoing evidence was extremely important upon the issue as to respondent's motive in